IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 29 OF 1998.

Ahmed Hasim Mulani,
Age- 32 years, Occu:
R/o: Pilliv, Tal: Malshiras,
Dist: Solapur. ..Appellant.
(Original Accused No.2).

Versus.

The State of Maharashtra,
(At the instance of Sr.P.I.
Sangola Police Station,
Dist: Solpaur. ..Respondent.

WITH
CRIMINAL APPEAL NO. 146 OF 1998.

Ramesh Mohan Navale,
Age: 22 years, R/o: Piliv,
Taluka: Malshiras, Dist: Solapur. ..Appellant.
(Ori.Accused No.1)

Versus.

The State of Maharashtra,
(At the instance of Sr.P.I.
Sangola Police Station,
Dist: Solpaur. ..Respondent.

Mr. K.S.Patil for appellant-original accused No.2.

Mr. Arfan Sait for appellant-original accused No.1

Smt. V.R.Bhosale, APP for the State.

Coram : S.B.MHASE, &
A.V.MOHTA,JJ

Date : December , 2004.

Oral Judgment :- (Per : S.B.Mhase,J)

1. These appeals are directed against the

judgment and order dated 2nd January 1999 passed in Sessions Case No. 114 of 1996, passed by the Additional Sessions Judge, Pandharpur convicting the appellants-accused for the offennces punishable under Section 302 read with 34 of the Indian Penal Code, 1908 and under Section 201 read with 34 of the Indian Penal Code, thereby sentencing each of them to suffer R.I. for life and to pay fine of Rs.1,000/-, in default to suffer R.I. for two years; and further sentencing to suffer R.I. for three years and to pay fine of Rs.5,000/- and in default to suffer R.I. for 3 months respectively for each of the convicts.

2. The deceased in this case is one Anil Karande who was known as Anil Master. He was brother of Pw.-17 - Shivdas Karande. First Information Report was lodged by Pw.-3 (Balasaheb Kharat) on 23.8.1996 at about 10.15 a.m. and the crime was registered as Cr.No.135 of 1996 under section 302 of the Indian Penal Code. Pw.-3 got this information, because while Pw.-3 was in the village, Pw.-3 learnt from one Maruti Kharat that the dead body of one unknown person is lying on the steps of the Mhaswad Canal No.2. On getting this information, Pw.-3 visited the spot and noticed the dead body on the steps of the canal, and thereafter lodged the First Information Report at Sangola Police Station. Police

thereafter came to the spot and prepard Inquest Panchnama (Exhibit-13). Since the dead body had number of incise wounds on head, the dead body was sent for post mortem. At that time, the spot panchnama, Exhibit-23 was also prepared by the police. After the post mortem, the dead body was handed over to the relatives of the deceased. At that time the clothes on the dead body were seized by the police vide Exhibit 15. After the investigation, the charge-sheet is filed and the accused are prosecuted.

3. In the present matter, the evidence collected by the prosecution can be classified and clubbed in the following categories.

(A) **Evidence of Eye-witness** namely, Pw.-8(Popat Bhimrao Kale) and Pw.-12(Vilas Aba Narale).

(B) Evidence of witnesses on the point of "**Last Seen Together**", namely, Pw.-9(Mohan Karande), Pw.-13(Anna Maruti Kharche) and Pw.-17(Shivdas Karande).

(C) **Extra-judicial confession** by accused No.1 to Pw.-10(Vittal Shendage).

(D) Evidence in the form of **Discoveries of Articles.**

. (A)(i) At the i

Accused No.1, Article No.10(Sattur) was discovered- the Memorandum of statement is at Exhibit-35 while the panchnama in respect of the discovery is at Exhibit-36.

. (ii) The burnt clothes of the

Accused No.1 were discovered at the intance of the Accused No.1 and the memorandum in respect of his statement is at Exhibit 37 and the discovery Panchnama of the burnt clothes is at Exhibit-38. Both these panchnamas have been proved by Pw.-3(Balasaheb Kharat). The motorcycle bearing No. GDK-4163 used in the commission of the offence was discovered on the basis of the statement made by the Accused No.1. The memorandum in respect of the said statement is at Exhibit-40. Exhibit-41 is the Panchnama of discovery. Both these documents have been proved by Pw.-7(Sharad Balasaheb Kadam).

. (B)(i) There at the instance of the accused No.2. The Fiat Car bearing No. MTP-8372 used in the crime and which was belonging to accused No.2, was disocvered in view of his statement recorded in the presence of the Panchas, (Exhibit-27). The car was discovered as per the said statement, under the Panchanam Exhibit 28, from the bungalow of the accused No.2 which was under consturction.

. (ii) After the discovery of the car, the police has taken the search of the said bungalow, where the car was kept and they have found a gunnybag in which the clothes of the accused No.2 were kept. Those clothes were seized under the Panchnama, Exhibit 29. Exhibits 27, 28 & 29 have been proved by the Panch-Pw.4(Kabir Pathan).

. (iii) The knife (Article-77) used in the crime by the accused No.2 was discovered in view of the statement made by him. The memorandum statement of the accused No.2 is at Exhibit-31 and the discovery Panchnama of attachment of knife made in view

of the said statement is at Exhibit-32. Both these Exhibits, namely, Exhibit Nos. 31 & 32 have been proved by Pw-5 Uttam Khandekar.

(E) **Medical Evidence:**

-Sanjay Gopichand Kambale is the Medical Officer who has taken blood samples of the Accused Nos.1 & 2. Pw.-16 is Dr.Vijay Waidande, the Medical Officer who has carried out the post mortem on the dead body. Pw.-14 & 15, namely, Vittal Shinde and Kalyani Haske are the police constables who had taken the blood samples of accused, the clothes of the deceased, and clothes of the accused, the articles found at the spot, etc., to send to the Chemical Analyser. Exhibit-74 is the Chemical Analyer's Report.

4. Exhibit-18 is the deposition of API- Bharat Rane, attached to the Karmala Police station, who has filed charge-sheet in the present case.

5. The motive for this crime is the illicit relationship of the deceased with the sister of the Accused No.1, namely, Jaylaxmi.

6. According to the prosecution, the accused and the deceased were friends. The incident has taken place in between 22.8.1996 and 23.8.1996 and in any event prior to 8.45a.m. on 23.8.1996. The place of incident is on Pandharpur-Karad Road at Bridge, on Nira Canal No.2, Division Mhaswad within the boundary of village Katphal.

8. According to the prosecution, on 22.8.1996, Pw.17, the deceased-Anil and his two other brothers, namely, Sadashiv and Vishnu left the house at 8.00 a.m. to water the bajara crops standing in their land. At about 11.00 a.m., the Accused No.1 came to the said land along with the nephew of Pw.-17 on a Luna Moped and asked the deceased-Anil to accmpany. But, the deceased told the Accused No.1 that he would come later on, as he was watering the corps. Therefore, the Accused No.1 waited in the field, and the Accused No.1 along with Pw.-17, deceased-Anil and his other brothers took meals in the field. After the meal, again the Accused No.1 asked the deceased to accmpany him to village Pilliv. The deceased-Anil asked Pw.-17 to go along with the Accused No.1 and that he (Anil) would follow him later on. Luna moped which was brought by the Accused No.1, was left by him for the deceased-Anil, and the Accused No.1 along with Pw.17 went to the Wasti(Place of

Residence in the field) on Yamaha motorcycle of Pw.-17. While coming to Wasti, the cousin brother- Madhukar met and requested to give lift. The deceased-Anil came on Luna, while Pw-17 along with the Accused No.1 were to leave for village Pilliv. The Accused No.1 asked the deceased that the Accused No.1 was waiting for Anil and asked to accompnay. The deceased-Anil told Accused No.1 that the Accused No.1 should go ahead and Anil would follow the Accused No.1. Therefore, Pw.-17 along with Accused No.1 and cousin brother - Madhukar went to S.T.Stand Pilliv. At S.T.Stand Pilliv, Mahadeo Mandgar met them and enquired about Anil Master. At that time, Anil also came to Pilliv S.T. Stand on Luna Moped, and thereafter the deceased- Anil went along with the Accused No.1 on his (Accused No.1's) motorcycle towards Pandharpur. The Motorcycle was bearing No.GDK-4163.

Thereafter Anil Master did not return.

. The deceased-Anil and the Accused No.1 were seen on motorcycle at about 3.30 to 4.30 p.m. at Sanmukh Chowk near Pilliv by Pw.-9 Mohan Karande. Pw.13 has seen the accused Nos. 1 & 2 and the deceased-Anil in Fiat Car No. MTP-8372 while Pw.-13 was travelling in Goods Truck at 10.30 p.m. onwards. When the said truck had halted at Mahud chowk, as one of the passanger was to get down from the said truck, Pw.13 has seen a white

coloured fiat car bearing No. MTP-8372, it was facing west and in the focus of the light of the truck Pw.13 noticed the accused and Anil Master in the said Car.

9. Pw.-8 & 12, eye-witnesses have stated that when they were returning back from Galave Wadi to their village Singorni, they have seen in the light of the motorcycle, at Katphal Phata, the place of incident which was on their road, that the accused were assualting one person by the left side of the road. The accused No.1 was holdng Sattur and the accused No.2 was holding knife. Pw.-12 (Vilas) who was driving the said Motor Cycle has taken the immediate turn and has reached to the place of their residence at about 1.30 a.m. On the next day, Pw.12 came to know that the said unknown person was Anil Master. Therefore, in the evening, Pw.12 went to the house of the deceased-Anil and informed Pw-17 about the incidence. On the next date, the statements of Pw.8 & 12 were recorded, so also the statement of Pw-17 was recorded. Threafter, other investigation was carried out. This is the chain of incidence.

9. All the 17 witnesses examined by the Prosecution have supported the prosecution case and none of them is declared hostile by the prosecution.

10. From the Inquest Panchnama (Exhibit 13) and the Post Mortem Report (Exhibit-58) and the testimony of Pw-16 it is clear that the death of Anil Master has taken place as a result of Cardio Respiratroy failure due to haemorrage shock due to multiple incised wounds and multiple fracture over scalp and intraoramide haemorrage. Therefore, the prosecution has established that the death of Anil was homicidal death and this aspect of the prosecution case has not been challenged by the accused - appellants. The case of the accused is that the accused have not committed this offence and that the eivdence has been manipulated and concocted by the proseuciton.

10. Therefore, it becomes necessary to scrutinise the evidence of the proseuction to find out whether the proseuction has successfully proved the guilt of the accused.

11. Pw.8 & 12 are the eye-witnesses and they are equally the eye-witnesses by chance. It is revealed from the testimony of Pw.-8 & 12 that on 22.8.1996 while Pw.-8 was sitting on the steps of the Maruti temple at village Shingorni at about 1.00 p.m., Pw.-12, Vilas Narale came on a motorcycle and requested him (Popat

Kale) to accompany him on his motorcycle to village Galawewadi. Therefore both of them had went to village Galavewadi. Pw.-12 was driving the motorcycle and Pw.8 was the pillion rider. Pw.-12 wanted to go to village Galavewadi, since he desired to see one Galave sir to take a loan of Rs.4,000/- as he was in need of money. They had reached Galavewadi at about 2.30 to 2.45 p.m., however, Galavesir was not at home. They got information that Galave sir had gone out of station and he would return in the evening. Therefore, they waited for Galavesir and at about 6.00p.m., Galavesir came back to home. Pw.12 requested the Sir to give Rs.4,000/- but Galave sir could give Rs.2,000/- only. Both of them had meal at 9.00 p.m. at the house of the Galavesir and they started their return journey to Shingurni at about 10.00 p.m.. At about 11.00 to 11.30 p.m. they came near Katfhal Tank and in the light of the motorcycle they saw two persons on the road,i.e. accused. Pw.-8 & 12 saw that the Accused No.1 was armed with Sattur and the accused No.2 was armed with knife and both the accused were assaulting one unknown person. They have identified the accused. They also noticed that one car was parked on the road. Pw.-12 has taken a turn towards the Itaki Fhata and thereafter they came to Shingurni via village Bacheti. They reached at home at 1.00 to 1.30 a.m. So far the corroboration of these two

witnesses with each other is concerned, they have fully corroborated each other and there is no discrepancy in their evidence.

13. Learned counsel for the accused - appellants have seriously challenged the testimonies of Pw.8 & Pw.12 on several grounds. So far as the testimony of Pw.-8 is concerned, learned counsel has pointed out the contradiction in respect of the Car No.MTP-8372 appearing in the statement recorded by the police; as against the fact that the witness has stated that "in the darkness he could not notice the car number." Further, the learned counsel pointed out the omission in respect of the fact that: when both the witnesses have stated in their testimony that when they had visited the house of the Galavesir they came to know from the mother of the Galavesir that the Galavesir had gone out of station and he would return in the evening,- this statement is not reflected in their statements before the police. Further, the omission has been brought on record is in respect of that -even though Pw.-8 has stated to the police that the assault was going on by the left side of the road, he cannot assign any reason for the aforesaid omission. Omission in respect of the statement that as soon as he know about the murder of Anil Master, he went to the house of Sarpanch Vilas

Narayan. Equally, the contradiction has been pointed out on the point that the said witness was not knowing whether there was any illicit relationship of Anil Master with the sister of the Accused No.1; Since the said statement appeared in the police statement. It is further pointed out that the witness has accepted that after they have seen the incidence the shortest route was possible to reach their home but they have travelled by the longest road. It is equally pointed out that Pw.12 has taken a sudden turn after having seen the incidence. That after seeing the incidence, the witness had a sleepless mind., and though the witness has disclosed the incidence to his wife, it was not disclosed to anyone till the statement was recorded. After the witness got an information from Madhukar Karande about the death of Anil Master, this witness did not feel it necessary to report the incidence to the police station and equally to the Family Members of the Anil Master. That, after the incidence the witness did not try to approach the police station or did not insist Pw.12 to approach the police station. On the basis of this material, it has been submitted that the testimony of Pw-8 is untrustworthy and it is not safe to accept. We do not find any substance in these submissions made by the learned counsel for the appellant. The omissions which have been brought on record are about the visit of

the said witness along with Pw.12 at Galavewadi to the house of the Galavesir. In fact, that earlier incidence has nothing to do with the incidence pertaining to the crime. These witnesses (Pw.8 & 12) had been to Galavewadi for their private work and while returning back, by chance, they have seen the Accused No.1 & 2 assaulting the unknown person, who later on transpired to be Anil Master. These witnesses have seen the incidence at night time and the place was isolated one, even though on road. Therefore, these witnesses were frightened of the situation, as such, it was not expecpted from them immediately to go to the Police station at such a night time when they have seen the accused persons having dangerous weapons in their hands, like, Sattur and knife. There is no omission in the testimonies of Pw.-8 & 12 in respect of the incidence which they have seen. Giving short narration of incidence of their earlier visit to Galavewadi, as against their total narration, in examination in, chief about the crime will not have any bearing on, and will not affect their substantive testimony on the point that they have seen the incidence at about 11.00 to 11.30 p.m.. Since they were frightened of, they have not immediately reported to the police.

. One more aspect has to be kept in mind that

according to these witnesses the victim was unknown person as against the accused Nos.1 & 2 were known to them. Therefore, in a frightened condition they have not approached to the police station. However, Pw.8 when he got the information,in the village on the next date, regarding the death of Anil Master at Katphal Phata, he has tried to see Pw.12 and Pw.8 came to know that Pw.12 has gone to the house of Anil Master in the evening. His conduct in the said night while explaining to his wife as to why he was late, he had explained the said incidence; and it is but natural that when the person comes late in the night, the wife normally asks the reason. It is not the case of the prosecution that this witness has not explained to his wife the reason for his late coming. We find that the so called omissions and discrepancies, which have been pointed by the learned counsel for the appellants, are not material omissions so far as the evidence on main incidence is concerned. We find that the testimony of Pw.8 is natural one.

14. So far as the testimony of Pw.12 is concerned, it is pointed out that there is omission of non disclosure of the work at the village Galavewadi, the contradiction about the number of the car has been brought on record, the contradiction about the time when

they reached at Galavewadi, i.e. at 1.00 p.m. or 2.00 p.m. has been brought on record, that the omissions in respect of the Galavesir being out of station reported by his mother and also the demand of Rs.4,000/- and that he gave only Rs.2,000/- has been brought on record. The contradiction is tried to be brought on record in respect of the words "Sura" & "Suri". Thus, it will be revealed that the omissions and contradictions in respect of both these witnesses, i.e., Pw.-8 and Pw.-12 is one and the same, i.e. in respect of their visit to the wasti of the Galavesir, reporting by his mother that Sir is out of station and the demand of Rs.4,000/- and amount of Rs.2000/- was being given by Galavesir. But, they are not in respect of the substantive testimony on which they are deposing as an eye-witness.

. Learned counsel tried to persuade us that these witnesses cannot be termed as eye-witnesses and they are got up witnesses, since both the witnesses have not reported the incidence immediately, nor the police have recorded their statements immediately. What we find that this incidence has taken place in the night of 22 & 23rd August 1996, funeral has taken place on the evening of 23rd and at the time when Pw.8 came to know that the deceased was Anil Master, the Pw.-8 has disclosed to Pw.17 about the incidence he had seen in

the earlier night, and on the next date the police has recorded the statements of Pw.8 & 12 & 17. Therefore, it is not a case where the belated evidence has been collected by the police. On the contrary, what we find is that these witnesses are natural witnesses and their evidence is acceptable. We also make it clear at this state that the conviction is not simplicitor based on the testimony of these witnesses but there are other circumstances also which support and corroborate the testimonies of these eye-witnesses.

15. It is revealed from the testimony of Pw-17 that on 22.8.1996, while he alongwith his two other brothers and deceased were irrigating their land, the Accused No.1 came there on a Luna and insisted the deceased-Anil to accompany him. The deceased told him that he will come later on. Therefore, the accused gave his Luna to the deceased and the Accused No.1 went to Pilliv along with Pw.17. The deceased followed them and came to ST. Stand Pillav and from that place the accused No.1 and the deceased proceeded towards Pandharpur on motorcycle bearing No.GDK-4163. Even though Pw.17 is the brother of the deceased, we do not find any reason to disbelieve his testimony because he has given the story in what manner the Accused No.1 has taken the deceased from the company of Pw.17 and his

other brothers. Pw.17 and his brothers had no occasion to doubt the conduct of the accused No.1 since the Accused No.1 was a friend of the deceased-Anil. Therefore, we can safely conclude that the prosecution has established that the Accused No.1 has taken the deceased on his motorcycle GDK-4163 towards Pandharpur from Pillav ST. stand.

16. It will be revealed from the testimony of Pw.9 (Mohan Karande) who had returned after changing oil of his motorcycle, at Salmuk chowk near Pillav, that at that time he saw that the Accused No.1 and the deceased were going on motorcycle at about 4.30 p.m. This witness (Pw.9) and the deceased -Anil also waived hands towards each other at that time. This was a natural conduct of Pw.9 and that too of the deceased, since they were acquainted with each other. The attempt is to demonstrate that, as witness-Mohan Karande is the relative of the deceased Anil, his testimony should not be accepted. We do not find any reason to discard the testimony of this witness simply on the ground that he was a relative of the deceased Anil.

17. There is evidence of Pw.13- Anna Kharche. It is to be noted that this witness is from the same village. He is a college going boy. From his

testimony, it is revealed that on 22.8.1996 at 1.00 p.m. he went from Sangola to Pillav to manage the affairs of the agricultural land. He completed his work and returned to ST. stand, Pillav at about 9.00 p.m.. Thereafter by ST. Bus, he came to Chalmukh phata. Pw.13 was to go to Sangola. He waited for ST. bus but there was no bus. At about 10.30 p.m., Pw.-13 noticed that one goods truck is coming, therefore, he gave signal to stop the said truck. Said truck halted there and he boarded the said truck. When the said truck had come at Mahud chowk, one passenger from the said truck got down. At that time, he(Pw.-13) noticed one white car bearing No.MTP-8372. In the light of the truck he noticed that the accused and deceased were in car.

. No doubt, Pw.13 is the relative of the deceased, however, there is nothing in his cross-examination which will lead us to disbelieve him. On the contrary, since he was a relative of the deceased, he was knowing him and equally he was knowing the accused. Therefore, his identification of the accused and deceased is most possible and acceptable one

18. Thus, from the testimonies of Pw.13, 9 & 17, it is established that it is the accused No.1 who took the deceased from his village towards Pandharpur.

Thereafter, it is Pw.13-Anna Kharche who has seen the deceased in the company of both the accused at about 3.30 p.m. onwards. Thereafter, Pw.-8 & 12 have seen the incidence at Katphal Phata. Thus, the chain of incidence has been established which shows the movement of the deceased Anil from his field, where he was in the company of his brothers, till the last moment when there was an attack on him by the accused No.1 & 2.

19. Much has been commented by the learned counsel for the accused on the point that Pw.-9, 13 & 16 are the close relatives and they have been put up by the Prosecution to concoct the case. It is submitted that these witneses are artificial witnesses. However, from the testimony of these witnesses and from the manner in which they are deposing, we find that their testimonies are trustworthy and we accept the same. It is to be noted that though these witnesses are relatives, they are stating the facts of the company of the deceased-Anil along with the accused at a particular point of time prior to the incidence, when they had seen the deceased in the company of the accused as per their statements referred to above when they were not knowing that any untoward incidence is likely to take place with the deceased. Therefore, the submissions made by the learned counsel to disbelieve or discard the testimonies

of these witneses are rejected.

20. Pw.10 is a witness on the point of extra-judicial confession. Pw-10 has stated that the deceased and accused are his friends, and on 23.8.1996 Pw.-10 was at Pillav ST. stand. By that time Pw.10 had come to know about the murder of Anil Master. Pw.10 has stated that ST bus from Pandharpur came and both the accused got down from the bus, and they were in a frightened mood, Pw.10 further stated that they (accused) took the witness by the side of the ST and the accused No.1 confessed before him that he (Accused No.1) has committed the murder of Anil Master with the knife and Sattur. Being asked why he has committed the murder of Anil, he told that Jaylaxmi had developed illicit relations with Anil, and therefore he committed murder, and requested Pw.10 to save him. It is not denied in the cross-examination that this witness is not a common friend of the accused and deceased. The only attempt has been made to show that this witness is a relative of the deceased, and therefore a got up witness. Though, we find that this is a weak piece of evidence, still it has a probative value to support the case of the prosecution.

21. So far the testimony of Pw.6 (Balasaheb Tone)

is concerned, he has proved Exhibit 35, i.e., Memorandum of statement of the accused No.1 wherein the accused No.1 has stated that the Sattur has been concealed in a heap of stones at some distance from Hotel Mauli, located at Sangola. Accordingly, the Sattur discovered is at Exhibit-36. The Sattur is blood stained. This witness has further proved Exhibit-37, i.e. the Memorandum statement of the accused No.1 wherein Accused No.1 has stated that the clothes which were put on by him at the time of incidence have been burnt by him near Mangalwedha village and that Accused No.1 would show the ash and burnt pieces which were kept below the stone. Accordingly, Exhibit-38 Panchnama shows that the half burnt pieces of the shirt and the ash was found at the said place which was shown by the accused, and Article-11, i.e., burnt clothe pieces were recovered.

22. Pw.4 is a panch for discovery of a car bearing No. MTP-8372. The said recovery was as per the statement given by the accused No.2 at Exhibit 27. The said car was discovered from the bungalow belonging to the accused No.2 at Pandharpur which was under construction. In a search taken in the said bungalow, the gunny bag was found having the clothes of the accused No.2 and these clothes were seized under Panchnama Exhibit-29.

. Pw.5-Uttam Baburao Khandekar is a panch on the point of the discovery of the knife. The knife was discovered as per the Memorandum statement at Exhibit 31 and the panchnama of discovery and attachment is at Exhibit 32. In respect of these witnesses also it is submitted by the learned counsel that these witnesses are interested witnesses, they are from the same village of the deceased Anil. In fact, the said objection should not have been taken when the witnesses are expected from the same locality and not from the stranger place who may be usual persons at the hands of the police. Nothing has been found in the testimony of these witnesses to disbelieve the same. We find that Article-10, 11 & 17 and clothes of the accused No.2 were discovered and found as per the respective panchnamas, and we therefore accept their testimonies.

23. Pw.-7 is a panch-witness for discovery of motorcycle bearing No.GDK-4163. This is the motorcycle used by the accused No.1 for taking the deceased Anil from ST. stand Pilliv on 22.8.1996 towards Pandharpur. This motorcycle has been discovered at the instance of the accused No.1 from Miraj ST Bus stand. The testimony of this witness is also trustworthy and we find that the said motorcycle has been discovered from Miraj ST stand

at the instance of the accused No.1 as per his statement. All these discoveries and seizure Panchnamas had established that the prosecution has rightly discovered and recovered the incriminating articles and place.

. All these articles were sent to the Chemical Analyser and its report is at Exhibit-74. The said report shows that the blood group of the accused No.1 was "B" and that of the accused No.2 is "O" and the blood group of the deceased Anil was "B". It will be revealed from the said report that the blood which was found at Exhibit-1, 3 to 9 and 11 to 13 is a human blood and that the blood which was found on Exhibits 4 to 8, 12 & 13 is of "B" group. On the clothes of the deceased, blood of "B" group was found. On tar and stones which were recovered from the place of the offence, human blood was found. On a Sattur (Article-10) i.e., Exhibit-8 from the said report, blood stains of "B" group were detected. Knife (Article-17) is also having blood stains of blood group "B". It is equally to be noted that the clothes of the accused No.2 were found to have blood stains of blood group "B". Though, the half burnt pieces of the shirt of the accused No.1 was found with the blood stains which were human, the blood group cannot be stated. It is to be

noted that it is not the case of the accused No.1 that he had sustained any injury and thereby the blood found on the aforesaid articles is his own blood. This is being considered, because the blood groups of the accused No.1 and deceased is one and same. But, since the accused No.1 had no injury of any kind at the relevant time, it will not be open for him to state that it is his own blood. Thus, we concluse that the blood of deceased -Anil was found on the clothes of both accused, Sattur and knife and accused have not explained these circumstances in any manner.

24. Thus, what we find that, taking into consideration the testimonies of the eye-witneses, witnesses who have deposed on the point of "Last seen together" and all these discoveries, coupled with the report of the chemical analyser leads to one and only one irresistible inference and finding of fact that the death of the deceased Anil was caused by the accused No.1 & 2 only; and no other inference follows. The prosecution has established its case beyond reasonable doubt.

25. The learned counsel for the appellant- accused has relied upon **1994(4) Bom.C.R,85 [Deoraj Deju Suvarna & Ors v/s. The State of Maharashtra],** more specifically

on Paragrpah-(D). It pertains to the appreciation of the evidence-interested witnesses. It is observed by the Division Bench that:

> "All the infirmities have to be appreciated in the light of the fact that Pw.2 Pravin Namdeo Shirsat is the real brother of the deceased. We are more than aware that the relationship would not result in the mechanical rejection of his testimony: The settled norms of appreciation of evidence require that the evidence of interested witensses is to be assessed with caution. Applying the caution test, in the background of the infirmities pointed out above, we are constrained to hold that Pravin did not see the incident and that he is a trumped up witnesses. "

. It is to be noted that in the said case there was only one witness who claimed to be the eye-witness and his testimony suffers from the infirmities. However, in the present matter, even if for the sake of arguments, it is accepted that the eye-witnesses are relatives of the deceased-Anil, they are chance witnesses and their conduct is absolutely normal. Apart from that, we are not basing the conviction simplicitor on their testimony, because there is ample other evidence which we have discussed above. So also, we have accepted and relied on the evidence by way of discovery of the several articles which were having blood stains with the blood group of the deceased and no explanation is coming forward as to why the clothes of

the accused are blood stained with the blood group of the deceased, and in what way the Articles 10 & 17, i.e., Sattur and Sura are having the blood stains of the deceased.

26. Therefore, taking into consideration the overall material brought on record by the prosecution, we find that the prosecution has established the case and no interference is required in the impugned judgment and order. We find that the appeals are without merit, and they are accordingly dismissed.

(Anoop V.Mohta,J) **(S.B.Mhase,J)**